

Jan 10, 2018

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DANIEL P. MELVILLE and MARY
R. MELVILLE,

Plaintiffs,

v.

THE BANK OF NEW YORK
MELLON CORPORATION, also
known as The Bank of New York as
Trustee for Citicorp Mortgage
Securities Trust Series 2007-6;
CHASE HOME FINANCE; JP
MORGAN CHASE BANK
NATIONAL ASSOCIATION;
NORTHWEST TRUSTEE
SERVICES, INC; and QUALITY
LOAN SERVICE CORP OF
WASHINGTON,

Defendants.

NO: 2:17-CV-30-RMP

ORDER GRANTING DEFENDANT
NORTHWEST TRUSTEE SERVICES,
INC.'S MOTION FOR SUMMARY
JUDGMENT AND MOTION TO
WITHDRAW AS COUNSEL

BEFORE THE COURT is a motion for summary judgment by Northwest

Trustee Services, Inc. ("NWTS"), ECF No. 35, and a motion to withdraw as counsel

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1 by NWTS's counsel Janaya L. Carter, ECF No. 54. Having reviewed the filings
2 pertaining to both motions, the remaining record, and the relevant law, the Court
3 grants both motions.

4 **BACKGROUND**

5 This Court previously granted in part and denied in part NWTS's motion to
6 dismiss Plaintiffs' claims against that entity for failure to state a claim under Fed. R.
7 Civ. P. Rule 12(b)(6). ECF No. 30. NWTS subsequently moved for summary
8 judgment on the only claims remaining by Mr. Melville and Ms. Melville under the
9 Fair Debt Collection Practices Act ("FDCPA") pursuant to 15 U.S.C. § 1692f. In
10 moving for summary judgment, NWTS made new arguments that it is not a "debt
11 collector" for purposes of liability under FDCPA's section 1692f and that Plaintiffs
12 cannot challenge the foreclosure of the property after it was surrendered as part of a
13 confirmed Chapter 13 bankruptcy plan. ECF No. 35. NWTS also filed documents
14 that were not before the Court for purposes of the earlier motion to dismiss: (1) an
15 "Appointment of Successor Trustee" document vesting NWTS with the powers of
16 the trustee that was recorded with the Spokane County Auditor on September 3,
17 2013; and (2) a sworn declaration dated August 28, 2013, that Defendant JP Morgan
18 Chase Bank, National Association, was the holder of the note pertaining to
19 Plaintiffs' property. ECF Nos. 36 at 2; 38-5; 38-6.

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1 After NWTS filed its motion for summary judgment on October 12, 2017, the
2 Court issued a notice to Plaintiffs, as pro se litigants, regarding the need to respond
3 to the summary judgment to avoid potential entry of summary judgment in the
4 moving party's favor. ECF No. 39. The Court's notice further explained in detail
5 the requisite format and components of a response to a summary judgment motion.

6 *See id.*

7 Plaintiffs did not participate in the scheduling conference in this matter on
8 November 2, 2017. Following the conference, the Court notified Plaintiffs in its
9 scheduling order that a consequence of continued non-participation or non-
10 compliance with Court orders could be dismissal of their lawsuit. ECF No. 42 at 2.

11 In a letter to the Court received on November 20, 2017, Plaintiff Mr. Melville
12 represented that he had been particularly busy with Plaintiffs' real estate
13 development business and had experienced problems receiving mail. The Court
14 extended the Plaintiffs' opportunity to respond to the summary judgment motion
15 until December 11, 2017, and directed the Clerk's Office to provide a copy of the
16 Court's Order to Plaintiffs at their e-mail address in addition to their mailing
17 address. ECF No. 53.

18 However, Plaintiffs still did not respond to NWTS's summary judgment
19 motion. To date, Plaintiffs have not filed a waiver to receive court documents
20 electronically nor filed a motion for leave to obtain a login and password to file

1 documents through the Electronic Case Filing (“ECF”) system, which the Court
2 encourages.

3 In addition, counsel for NWTS, Janaya Carter, filed a motion to withdraw as
4 attorney for the entity on December 5, 2017, stating that that the firm that employed
5 her was closing all of its offices and terminating her employment effective
6 December 12, 2017. ECF No. 54 at 1–2. Ms. Carter further represented that NWTS
7 had been informed of the consequences of the proposed withdrawal from
8 representation, and her client consented to the withdrawal. *Id.* at 2. Ms. Carter
9 provided a mailing address and phone number for NWTS “General Counsel.” *Id.*

10 **DISCUSSION**

11 In resolving NWTS’s earlier motion to dismiss, the Court liberally construed
12 Plaintiffs’ complaint to claim that NWTS violated the FDCPA by pursuing
13 nonjudicial foreclosure without a contemporaneous right to possession of property
14 claims as collateral through an enforceable security interest. ECF No. 30 at 8; *see*
15 15 U.S.C. § 1692f(6). Specifically, the Court declined to dismiss Plaintiffs’ §
16 1692f(6) claims against NWTS because no documents demonstrating that
17 trusteeship under the Deed of Trust had been transferred to NWTS, as NWTS
18 alleged, were then cognizable to the Court. *Id.* NWTS provided those documents to
19 the Court at the summary judgment stage, ECF No. 38-6, thereby remedying the

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1 earlier impediment to dismissal of the remaining claims against NWTS. Therefore,
2 the Court finds that summary judgment is appropriate.

3 With respect to withdrawal as counsel, the Court finds that good cause
4 supports the Court's approval of Ms. Carter's motion pursuant to Local Rule
5 83.2(d)(4).

6 Accordingly, **IT IS HEREBY ORDERED:**

7 1. Defendant NWTS's Motion for Summary Judgment, **ECF No. 35**, is

8 **GRANTED.**

9 2. Plaintiffs' FDCPA claims against NWTS are **dismissed with prejudice**.

10 3. The District Court Clerk is directed to **enter Judgment for Defendant**

11 **NWTS.**

12 4. NWTS's counsel's Motion to Withdraw as Counsel, **ECF No. 54**, is

13 **GRANTED.** Ms. Carter shall be terminated as counsel for NWTS, and the

14 address for in-house counsel provided in ECF No. 54 shall be entered into

15 ECF to update the contact information for NWTS. NWTS is reminded that

16 Local Rule 83.6 provides that a corporation may not proceed *pro se*, so a

17 Notice of Appearance by substituted counsel would be necessary before

18 NWTS appears again in this action in any manner.

1 The District Court Clerk is directed to enter this Order, provide copies to
2 counsel, to NWTS at the updated address provided at ECF No. 54 at 2, and to
3 Plaintiffs, and **terminate NWTS** as a Defendant in this case.

DATED January 10, 2018.

s/ Rosanna Malouf Peterson
ROSANNA MALOUF PETERSON
United States District Judge

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